HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)
Description of the case.

No. WP 925 year 2003 (M/S)

Mohamad Farooq Versus Dy. Director consolidation and another

Approved for reporting.

~~Not approved for reporting~~

Date of decision 25.9.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 925 of 2003 (MS)

1. Mohammad Farooq s/o Mahmood Hasan
2. Waqar Ahamad s/o Mahmood Hasan
   Both resident of village Parli Gujar,
   Partgana and Tehsil Roorkee, District
   Hardwar. .....Petitioners

Versus

1. Deputy Director of Consolidation, Haridwar
2. Sadi Lal s/o Sri Tej Bhan
   R/o Ramnagar, Roorkee,
   District Haridwar .....Respondents

Sri Lok Pal Singh, Advocate for the petitioner
Standing Counsel for the respondent no. 1.

Dated: 25th September 2003

Hon'ble Rajesh Tandon J.

The present writ petition has been filed challenging the order dated 23.8.2003 by which amendment application has been rejected.

As will appear from the amendment application that the petitioner wanted to amend the grounds of revision, details of which are mentioned in the application as under:

निगरानी के पृष्ट सं0 6 पर पैरा नं0 12 के बाद 13. यह कि प्रष्नगत सम्पत्ति आबादी है आबादी का स्वत्व चकदबन्दी न्यायालय द्वारा तय नहीं किया जा सकता है। इसलिए भी विद्वान निम्न न्यायालयों द्वारा पारित प्रष्नगत उदेष्य त्रुतिटपूर्ण व क्षेत्राधिकार के बाहर है इसलिए भी निम्न न्यायालयों के आदेष निरस्त किये जाने योग्य है।

the brief facts of the case are that Consolidation Officer of Roorkee has passed order dated 17.9.2001, against which petitioner preferred an appeal under Section 11(1) of Consolidation of Holdings Act. Another appeal No. 417/35 SAdi Lal vs. Mohd. Farooq and others was filed by the respondent no. 2 before the Settlement Officer of

Consolidation, Roorkee, The appeal of the petitioner was dismissed by the Assistant Settlement Officer, Roorkee on the ground of delay however, the appeal filed by respondent NO. 2 was allowed vide order dated 27.11.2001.

The petitioner has preferred a revision No. 420 of 2001 Mohd. Farooq vs Sadi Lal under section 48 of Consolidation of Holdings Act before the Deputy Director of Consolidation, Hardwar. During the pendency of revision, the petitioner has filed an amendment application to amend the ground of revision to add the ground that the property in dispute is recorded in the revenue record, therefore, the consolidation courts are not empowered to decide the controversy and as such the orders passed by Consolidation Officer as well as by the Assistant Settlement Officer of Consolidation, Roorkee are beyond jurisdiction and illegal. Against the amendment application objection was filed by respondent no. 2 and the Deputy Director of Consolidation has rejected the amendment application vide order dated 23.8.2003.

Heard the learned counsel for the parties at great length.

A perusal of the order passed by the Deputy Director of Consolidation shows what he ha snot applied his mind towards the amendment sought and has passed the unreasoned order. The petitioner wanted to amend the grounds of the revision alone. Any amendment made by the petitioner would not have deprived him from proving the case on the original pleadings and the amendment was only in order to bring further facts in the grounds of revision. Such an amendment cannot be taken to have changed the nature of the proceedings.

I am supported by the judgment of the Apex Court in the matter of amendment that where the amendment is not allowed it may cause

Miscarriage of justice. The observations made in the case of Fritiz T.M. Clement and another vs. Sudhakaran Nadar and another, AIR 2002 SC 1148 are quoted below:

"*therefore, the grounds of rejection of amendments are legally unjustified and based on non application of mind to the exact nature of amendments. We reiterate that no prejudice could possibly be caused to the respondents. I fact, by reason of clarification and elaboration of the appellants plaintiffs' claim before the trial has started, the respondents defendants will be in a better position to know the exact case of the plaintiffs and proceed accordingly. On the other hand, it would result in miscarriage of justice if the amendments are not allowed and the appellant plaintiffs are compelled to go to trial on the basis of an ill drafted plaint with cryptic and inaccurate averments."*

The revisional Court should have disclosed as to whether the amendment sought may change the nature of the proceedings. The revisional Court without discussing the same and without applying his mind passed the order rejecting the amendment application.

The admission of the writ petition will block the entire proceedings and as such in the interest of justice the revisional court is directed to pass reasoned order afresh on the amendemtn application filed by the petitioner in the light of the observations of Apex court.

With these observations the writ petition is disposed of.

(Rajesh Tandon, J.)

25.9.2003
Dhyani